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EXAMINER

HANRAHAN, JOSEPH M.J.

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,946	Applicant(s) EIJSAKERS ET AL.	
	Examiner JOSEPH M.J. HANRAHAN	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/28/09.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 23-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/23/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Claims 1-20 and 23-37 in the reply filed on 4/28/09 is acknowledged.

Claim Objections

2. Claims 5, 6, 8, and 18 are objected to because of the following informalities: it appears that two systems for making deletions in the claims are being used: strikethrough and double brackets. For clarity's sake the double brackets should be eliminated in favor of strikethroughs. Appropriate correction is required.
3. Claim 6 is objected to because of the following informalities: there is a grammatical error in the last line of the claim. Appropriate correction is required.
4. It appears that a word was left out of the second line of claim 18.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. **Claims 1-20, and 23-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**
7. Regarding Claim 1, there are two "means" indicated by the claim: one is the package means and the other is the manually operable means. For the purposes of

Art Unit: 1794

examination the examiner has interpreted the "means" to mean the package. The claims that depend from this claim and recite "the means" have therefore been interpreted to refer to the package as well.

8. Regarding Claims 18 and 19, these claims are indefinite because there is no antecedent basis for the term "the extract" in Claim 19. It appears that there was a typographical error in Claim 18. The examiner has interpreted Claim 18 to read, "...comprises an extract or concentrate."

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4, 6-16, 20, 23, 27-32, and 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Brady (US Pat. No. 5939122).

11. Regarding Claim 1, Brady teaches an apparatus for creating froth or foam of liquids such as milk (Col. 2, Line 8). The presence of froth indicates that there is gas and milk is a foamable liquid. In Fig. 2, a container with a plunger is shown (Item 40). The up and down motion of the plunger displaces the gas and liquid in the container and froths the milk (Col. 2, Lines 15-22).

12. Regarding Claim 2, as can be seen from Fig. 2, the up and down motion of the plunger will vary the shape of the interior space of the package.

Art Unit: 1794

13. Regarding Claims 3, 4, and 20, the plunger (40) has a spring (49) around its periphery. Springs are considered to be both flexible and elastic by nature.

14. Regarding Claims 6, 27, 28 and 29, the plunger (40) and rod (30) assembly are equivalent to a piston. The rod/plunger is included in the package and can be operated from outside the package as shown in Fig. 2.

15. Regarding Claims 7, 8, 30-32, and 34, the plunger delineates a space above and below itself as shown in Fig. 2. These are considered two chambers. The chambers are mutually connected via a screen (42) that allows for displacement of liquid and gas.

16. Regarding Claims 9-11, 35, and 36, the screen (42) is a fluid flow disturber. Screens inherently have multiple channels through which fluids may pass and create turbulence as fluids pass.

17. Regarding Claims 12, 13, and 37, liquid is initially added to the container the chamber, the device is operated and the liquid becomes aerated or gasified (Col. 4, Lines 57-65). As in Fig. 2, bubbles are shown above the plunger which indicates that it is at least partially filled with gas.

18. Regarding claims 14-16, the container is made of clear plastic which, as shown in Fig. 1, is a conical sheet (Col.2, Line 24; Item 10). As can be seen in Figs. 1 and 2, the container (10) is cup-shaped with a generally cylindrical shape comprised of a base (13) and sidewalls (14) continuously connected thereto.

19. Regarding Claim 20, the container has a spout so that the contents may be removed from the container (Figs. 1 and 2, Item 11a; Col. 4, Lines 44-50).

Art Unit: 1794

20. Claims 1-5, 15-19, 24-26, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman (US Pat. No. 4306492).

21. Regarding Claim 1, Zimmerman teaches a cup shaped package in Fig. 7 for making coffee with a bellows portion (53) at the bottom of the package which serves to pump water through a perforated partition (Fig. 7, Item 55) and in and around a filter bag filled with coffee (Col. 4, Line 61-Col. 5, Line 24). The bellows portion is manually operable (Col. 5, Lines 2-8) and could displace the liquid and gas in the container in such a way as to create enough turbulence by way of the perforated partition to create foam. The examiner notes that Claim 1 only requires that "...displacement CAN be effected..." (emphasis added).

22. Regarding Claim 2, the bellows portion (53), when employed, varies the shape of the space below the partition (Col.5, Line 3: Item 55).

23. Regarding Claims 3 and 4, the bellows portion is flexible (Col. 4, Lines 66-67) and elastic as paper pulp and plastic naturally have some tendency to return to their previous shape if bent but not broken as is done in Zimmerman.

24. Regarding Claim 5 and 24-26, Zimmerman teaches a bellows (Fig.7, Item 53).

25. Regarding Claims 15-17, the package taught by Zimmerman can be made from plastic that is a rough conical sheet in a cylindrical shape(Fig. 7; Col. 4, Line 62) the bellows portion is cup shaped and can be pressed to displace the gas and liquid in the package (Fig.7; Col. 5, Lines 4-6).

26. Regarding Claims 18 and 19, the coffee is extracted into the water and so comprises a coffee extract (Col. 3, Lines 2-8).

Art Unit: 1794

27. Regarding Claim 33, Zimmerman teaches that the container can be constructed from a bellows portion and a cup portion to define a chamber (Col. 4, Line 68 – Col. 5, Line 3). The cup portion is a separate chamber than from the bellow. The two chambers are interconnected via the perforated partition (Fig. 7, Item 55).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH M.J. HANRAHAN whose telephone number is (571) 270-7060. The examiner can normally be reached on M-F from 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOSEPH M.J. HANRAHAN/
Examiner, Art Unit 1794

/JENNIFER MCNEIL/
Supervisory Patent Examiner, Art Unit 1794